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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

UNITED CHURCH OF THE MEDICAL CENTER, an Illinois religious corporation, **THE UNITED METHODIST BISHOP OF THE CHICAGO AREA**, et al.,

Petitioners,

v.

STATE OF ILLINOIS MEDICAL CENTER COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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QUESTIONS PRESENTED

1. Whether the Respondent state Commission, in authorizing the partial condemnation of church property, violated the Fourteenth Amendment's proscription against taking of property without due proces of law when three of the four Commissioners who were present and voted upon the enabling resolution were subsequently discovered to have been affiliated with the private institution (a hospital) which, by secret pre-arrangement, was to be the intended recipient of the condemned parcel; particularly so, when one of the Commissioners, who moved passage of the resolution in furtherance of the covert plan, was the hospital's own attorney?

2. Whether in a partial condemnation of real estate the property owner can obtain just compensation as guaranteed by the Fifth and Fourteenth Amendments, if, as here, he is prevented from ascertaining and proving severance damages to his remainder, because the condemning authority will not disclose what use it intends to make of the adjoining portion of the property actually condemned?

3. Whether a state agency exceeds its authority to condemn private property only for "public" purposes under the Fifth and Fourteenth Amendments and violates the property owner's corresponding right to contest the existence of a valid public purpose when said agency never considered a proposed future use for the tract, lacked any plan or concept in regard thereto, and for six (6) years has refused in its pleadings, discovery responses and testimony, to inform the Church or the state court what it proposes to do with the condemned property?

PARTIES TO THE PROCEEDING

The other parties to this case not included in the caption (i.e. other than United Church of the Medical Center and the resident United Methodist Bishop of the Chicago area) are the Board of Home Missions and Church Extension of the Methodist Church (formerly the Methodist Episcopal Church), the Northern Illinois Annual Conference of the United Methodist Church and the Board of Home Missions and Church Extension of said Annual Conference.

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v.

STATE OF ILLINOIS MEDICAL CENTER COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

United Church of the Medical Center and the Resident United Methodist Bishop, Chicago Area, et al., respectfully petition for a Writ of Certiorari to review the judgment of the Appellate Court of Illinois, First District, in this cause, review of which was denied by the Supreme Court of Illinois upholding a partial condemnation by Respondent of Petitioner Church's religious property.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, First District (App. A, *infra*), is reported at 142 Ill. App. 3d 498 and at 491 N.E. 2d 1237 (1st Dist. 1986). The Orders of

the Supreme Court of Illinois denying Petitioners leave to appeal (App. B, *infra*) and denying Petitioners' Motions for leave to file a Motion for Reconsideration (App. C, *infra*), are not reported.

JURISDICTION

The Supreme Court of Illinois declined to grant Petitioners leave to appeal on October 2, 1986. There is no provision in Illinois practice for the filing of a Petition for Rehearing of such a decision by the Supreme Court of Illinois to deny leave to appeal. Petitioners did, however, file a motion with the Supreme Court of Illinois for leave to file a Motion for Reconsideration, which motion was denied on December 1, 1986.

The petition is being filed within 90 days of the Supreme Court of Illinois' order refusing leave to appeal, filed October 2, 1986. This Court has jurisdiction to review the Illinois Appellate Court's judgment by Writ of Certiorari pursuant to 28 U.S.C., Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the interpretation of the following provisions:

1. The Fourteenth Amendment to the United States Constitution, which provides, in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law. . . ."

2. The Fifth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, which provides in pertinent part:

> ". . . nor shall private property be taken for public use, without just compensation. . . ."

STATEMENT OF THE CASE

To Petitioners' knowledge, no reported decision has ever before involved the contested taking by a governmental body of real property owned and actively used by a religious congregation.[1] All of the religious units sued by the State's Medical Center Commission ("Commission") as parties defendant interested in the real estate, are constituent organizations or officials of the United Methodist Church. These include the office of the Church's Resident Bishop of the Chicago Area.

While no claim is made here by Petitioners that churches are constitutionally immune from condemnation under proper circumstances, state procedures which offend a property owner's constitutional rights to due process and just compensation warrant special concern where, as here, a church is the target. The facts are these:

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[1] See, Comment, *University of Colorado Law Review*, Vol. 46, p. 43 (1974) which notes:

> "Because legislative and administrative bodies have sensitively respected the interests of churches, there is a paucity of cases involving church condemnation and an absence of condemnation theory concerning churches."

A. The Background of the Taking.

The parcel sought to be condemned in this partial taking (sometimes referred to as "Lots 1, 2 and 3"), is a fenced parking lot approximately 75 feet by 150 feet in size adjoining the Church sanctuary in Chicago. The Methodists have operated a church and programs supporting the healing arts on this site continuously since 1893. The parcel affords the Church about one-half of its available offstreet parking.

Since 1967, the targeted property (Lots 1 through 3) and the remainder (Lots 4-10) purchased with funds from Methodist sources, have undergone unified use for the religious purposes stated through a joint Methodist-Presbyterian ecumenical program (Testimony, Vol. III, Tr. 78-79; Vol. VII, Tr. 11).

The United Methodist denomination's investment at this site, in terms of both service and dollars, is substantial. In recent years, the United Methodist Conference in Northern Illinois has subsidized the Church's medical center programs by grants aggregating nearly $900,000 (Vol. III. at Tr. 69).

B. The Decisions Below.

During the trial phase, the Church filed an original and four amended traverses to the condemnation petition. It sought to dismiss the action for lack of any disclosed public purpose, administrative conflict of interest and a variety of other defects. The trial court denied all such motions. At the compensation trial, it also refused to permit the Church to proceed to introduce evidence on severance damages to its remainder property, reasoning that there was insufficient unity of title between the two adjoining parcels. It awarded the Church $45,000 for the parking lot alone.

The Appellate Court affirmed in all respects, save only its reversal of the Trial Court's refusal to take evidence on the question of damages to the Church's remainder. It remanded the case for that limited purpose. However, the Appellate Court did not grant the Church's request that the Commission give it information concerning its intended use of the condemned portion of the property adjoining its sanctuary. This left the Church unable, on remand, to ascertain or prove the actual severance injury to its sanctuary except by pure speculation.

Under the Medical Center Commission's enabling statute, the Illinois Medical Center Commission Act, churches and other "religious organizations" have long been contemplated as being among the several classes of institutions occupying and working within the district. See references to "religious organizations" at Ill. Rev. Stat., Chapter 111½, Section 5004. In a January, 1947 letter from the Church to the Commission, it was stated:

> "We are very happy to learn . . . that the Church is recognized by the Commission as a service agency which the Commission desires to have remain in the Medical District." (Def. Ex. 16).

However, about 1973, there began a series of events designed to push the Church from its site for the benefit of a nearby private hospital. Rush-Presbyterian St. Luke's Medical Center (hereinafter called "Rush"), an occupant of the district, having embarked upon an aggressive program to acquire land, made several overtures to purchase the entire property at a nominal price far less than the Church's investment in the site.[2] (Def. Ex. 15). Money was not, however, the issue.

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[2] The Church fathers asked to be given a reason or explanation of proposed use to explain Rush's interest in the land. Such a reason, although frequently requested, was not given and has yet to be given to this day as more fully developed below.

The Church's official board rejected the offers, based on their desire to continue the Church's work in the district at its historic location. Unknown to the Church and not discovered by it until years later, Rush then covertly turned to the Medical Center Commission for assistance. (Def. Ex. 15). The Commission, in turn, secretly pledged to secure the Church's property for Rush by one means or another.

Evidence uncovered through discovery shows that the Commission staff lent its support to Rush's goal of forcing the Church to sell the property by making it highly uncomfortable for the Church to remain in the District. This course of conduct would not be particularly unusual or significant, in and of itself, were it not for the hidden interlocking relationships and conflict of interest between the Commission and Rush, as shown later.

First, by letters dated December 3, 1976 and January 11, 1977, the Commission's Executive Director, Raymond J. Bayster, sought to induce the City of Chicago's Zoning Administration to investigate and bring sanctions against the Church for allegedly "illegal" parking by members of the public (actually employees of Rush Hospital) in the Church's lot. (Def. Exs. 12 and 13). These efforts to embroil the Church in difficulty with the Zoning Administration were unproductive. (Testimony, Vol. III at Tr. 98).

The next move by the Commission took the form of a series of legally ineffectual resolutions to condemn the parking lot dated June 16, 1978, September 15, 1978, December 14, 1979 and July 17, 1981, respectively.[3] (Pet.

[3] The definitive resolution supporting the taking was the resolution of July 17, 1981, prepared by new legal counsel to the Commission to cure or "tighten up" defects in the earlier three resolutions.

(Footnote continued on following page)

Exs, 1, 2 and 3). Rush's behind the scenes involvement was not open and visible but clandestine. Incredibly, it has been hotly denied to this day even though it is irrefutable. The Commission's Executive Director testified that he had no recollection of any effort by Rush to institute the taking. (Vol. II at Tr. 30-31). However, Commission records surrounding these resolutions, which came to light in discovery, disclosed otherwise. Several contain the notation "request of RPSL [Rush Hospital]." (See, e.g., Def. Ex. 2 at item 5(c) attached hereto as Appendix F.)

At the hearing, the Commission's Director explained that these written references to Rush were merely a "mistake." (Vol. II at Tr. 31). However, comments by the Commission's Chairman, in the minutes of the meeting of June 16, 1978 ("This is the request of Rush-Presbyterian") leave little doubt that the Commission well understood the source of the item of business before it. (Def. Ex. 1 at p. 45). In fact, one of Rush's attorneys, present as an observer at the meeting, reacted with consternation at the Chairman's having referred to Rush openly on the record, saying it gave him a "coronary." (*Id.*)

Finally, 1979 correspondence obtained in discovery by the Church between Rush's attorneys and the Commission (See attached Appendices G, H and I) leaves no doubt that the property was really being taken for Rush's benefit:

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[3] *continued*
(Def. Ex. 4 at pp. 16-17). For example, the first two resolutions contained no legal description at all. The third contained an incorrect legal description including a portion of the Church's sanctuary on Lot 4. (Pet. Ex. 2). None of the three resolutions attempted to describe any purpose for the taking. The conflicts of interest surrounding the passage of the fourth definitive resolution are separately addressed below.

> "Dear Ray: [Commission's Executive Director] . . . In instituting a condemnation action, please do not forget that the portions of the vacated alley to the west of the [church] parcels in question are to be included in the action. . . ." (App. Ex. H attached).

The predicate for the partial condemnation action on Lots 1-3 appears to have been Section 5004 of the Illinois Medical Center Commission Act, Ill. Rev. Stat., Ch. 111½, Sec. 5004, which forbids the Commission to condemn property of a "religious organization used by it for religious purposes," but authorizes the Commission to proceed against property "used for both religious and secular purposes." Apparently, the Commission viewed the "religious use" exemption as a bar to condemnation of the sanctuary building but no obstacle to its separate condemnation of the parking lot serving that edifice.

C. The Attempted Reverter Action.

The sanctuary did not escape the Commission's attentions, however, for its undisclosed objective was to aid Rush in taking over the entire Church site. Thus, in April, 1980, the Commission added to the condemnation action new title reverter charges and a notice of hearing aimed at taking away, without compensation, the remainder of the Church's properties (Lots 5 through 10).[4] (Def. Ex. 15). This action was predicated on the professed "discovery" that the Church had purportedly violated conditions contained in a deed from the Commission to its legal predecessor twenty-one years earlier. The Commission then appointed Mr. Bayster, its Executive Director since

[4] For some reason Lot 4, situated in the middle of the Church complex, escaped attack under both the condemnation case, as amended, and the reverter charges.

the early 1960's and before that, its lawyer, as the hearing officer in the reverter matter to hear these new charges of non-use or disuse which Bayster *himself* had arranged to be brought against the Church (*Id.*).

The reverter action against Lots 5 through 10 thus complemented the concurrent condemnation action against Lots 1 through 3, making possible the seizure of nearly all the Church's lands and improvements by one device or the other. While Bayster vehemently denied at the hearing that any interrelationship existed between the attempted condemnation of Lots 1-3 and the attempted reverter of Lots 5-10 (Vol. I, Tr. 6-7), he is quoted in the Commission meeting minutes of June 20, 1980 as confirming such a linkage by describing the related proceedings against the Church properties as a "dual action." (Minutes of June 20, 1980 at pp. 38-39; Def. Ex. 14).

As noted earlier, Rush and its counsel worked closely behind-the-scenes with Bayster in preparing and intensifying the legal pressures against the Church, actions which might not be particularly remarkable except for the special linkage which existed between Rush and the Commission, as will hereinafter be described. On November 5, 1979, one of Rush's attorneys wrote Bayster, furnishing him with a "necessary parties" search. (App. H, attached). On March 17, 1980, that attorney again wrote to Bayster to advise him of the investigation he had made into the corporate history of the Church's Wesley Foundation, apparently, to assist Bayster in the "reverter" leg of the "dual action." (App. I, attached).

At or around this time, Rush also commenced and financed a secret day-and-night surveillance of the Church's facility, exhaustively recording all parking activity over several days and listing vehicles by make and license number (Def. Ex. 10). This "stake-out" was presumably carried out to determine the level of parking lot usage by

religious officials and worshipers so as to build a case of "non-use" or "partly secular use" against the Church.

Under severe pressures from the Commission's reverter procedure, the Church turned to the federal courts for relief in a Section 1983 action, complaining that the Commission was trying its own reverter case in violation of due process principles. This Section 1983 action was ultimately successful in stopping the reverter, as more fully described below, (See *United Church of the Medical Center v. Medical Center Commission*, 689 F. 2d 693 (7th Cir. 1982)); however, it did not deal with the Commission's separate condemnation case which continued unimpeded.

D. The Commission's Filings in State Circuit Court.

When the Commission filed its Petition for Condemnation in the trial court, it broadly described the statutory purpose of the Medical Center District and made a recital of "necessity" but provided no intimation or disclosure as to what was to be done with the subject property. The only clue as to a possible reason for the taking was the phrase "request of RPSL" discovered in Commission records, but as mentioned above, the Commission's Executive Director denied under oath that the condemnations were instigated by, or for the benefit of, Rush. (Vol. III at Tr. 10). This vagueness as to "purpose" would be puzzling, were it not for the fact that the Commission did not wish to disclose its underlying pre-arrangement with Rush and that the taking really had no purpose, plan or specifically identifiable medical objective other than a punitive effort to coerce the Church into submission after it had displeased Rush by turning down its purchase overtures.

In July, 1981, after the condemnation case had been pending for approximately thirteen months, a new at-

torney was substituted as special counsel for the Commission. At or about that time, the Commission adopted a purportedly retroactive amendment designed to "tighten up" earlier resolutions, wherein for the first time it belatedly professed to recite a "purpose," namely, "medical institutional expansion." (Pet. Ex. 4).

Neither the transcript of the July 17, 1981 meeting in which the "curative" action took place nor the transcripts of the earlier meetings of 1978 and 1979 include any discussion of a need for "medical institutional expansion" across the Church's land. In fact, the record is devoid of any information as to what institution, if any, is to expand, what form that expansion would take, and how any expansion would relate either to the parking lot or the entire 10 lots making up the Church's property. For example, Bayster testified as follows:

> "Q. (By Mr. Witwer, Jr.): Now, in terms of the words used . . . [medical institutional expansion], I'm simply asking whether there was, at that time, a deliberation over the need for expansion onto the Church's land?
>
> "A. (Bayster): The answer is no." (Vol. I at Tr. 42).

To the contrary, the only possible applicable reference to expansion preceding the vote on the "tightened up" resolution is the following comment by Commission Brown at the June 16, 1978 meeting:

> ". . . I think Rush-Presbyterian St. Luke's is having a little problem with expansion. The federal government and the state both are intervening and saying that they are over-expanded now, they have too many beds." (Minutes of June 16, 1978, excerpt attached to Def. Mem. in Support of Second Amended Traverse at Ex. A-1).

E. The Ties Between Certain Commissioners And Rush.

This is not a "rule of necessity" case since the Commission has seven (7) members, four (4) of whom have no discernible ties to Rush. However, discovery disclosed that three of the sitting commissioners who actually authorized the condemnation at a meeting attended by a bare quorum of four, have important links to Rush. The Appellate Court failed to mention these facts in its opinion. Commissioners Livingston and Hoffman are top officers of the Chicago Foundling Home which, by the Commission's own description, is an "affiliate" of Rush operating within the Medical Center District.[5] Livingston receives in excess of $5,000 per annum in that capacity. (Vol. I at Tr. 73-74). *Commissioner Roach was, until sometime in 1979, an officer of Rush acting as its principal in-house legal counsel. (Def. Ex. 11 at par. 2). Immediately thereafter, he became and he remains a partner of Gardner, Carton & Douglas, a Chicago law firm, and is Rush's principal outside counsel.* (Vol. III at Tr. 51).

The minutes of the Commission reflect that Messrs. Livingston and Hoffman did not recuse themselves from the condemnation vote against the Church in the meetings of June 16, 1978 and September 15, 1978, respectively.

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[5] At the trial, the Commission's counsel contended that the relationship was not one of affiliation "as such," (Vol. I at Tr. 73) and Bayster insisted that ". . . there is no affiliation between Chicago Foundling Home and the Rush-Presbyterian St. Luke's." (Vol. III of Tr. 33). However, this is contrary to an earlier discovery response signed by Bayster which stated:

> "None of the people [Commissioners) named above had or have any affiliation with Rush . . . except . . . Roach . . . who, until recently, was general counsel for RPSL; and . . . Livingston, who is President of the Board of the Chicago Foundling Home with whom RPSL contracts for services; and . . . Hoffman, who is Chairman of the Board of Chicago Foundling Home." (Def. Ex. 11 at par. 2).

Similarly, the minutes of December 14, 1979 (Def. Ex. 3) and the key July 17, 1981 meeting (Def. Ex. 4) which enacted the "curative" condemnation resolution against the Church, show continued participation by Commissioners Livingston and Hoffman. The July 17th minutes likewise record no recusal of Commissioner Roach, the hospital's own attorney on the condemnation issue. In fact, it was Roach who moved adoption of the definitive resolution of condemnation of July 17, 1981. (Pet. Ex. 3; Def. Ex. 4 at p. 18).

It is noteworthy that Roach elected to recuse himself from the Commission's companion reverter proceeding, but only after the Church sought federal relief against the reverter case in a Section 1983 proceeding and the matter was pending on review in the federal appeals court. We respectfully ask this Court to take judicial notice of Mr. Roach's recusal letter of January 14, 1982 which was submitted by Rush's counsel to the Seventh Circuit Court of Appeals in Cause No. 81-2887 (Appendix J attached); *also*, Rush's brief to the Seventh Circuit Court of Appeals in that cause, page 36, footnote 21, where Rush acknowledged that:

> "Commissioner William Roach arguably has *a direct personal interest* in the outcome of the reverter proceeding due to his law firm's representation of RPSL and RPSL's interest in the subject property. However, Commissioner Roach has recused himself from the [reverter] matter and will take no part whatsoever in any deliberations or discussions with respect thereto." (emphasis added).

The recusal came too late to help the Church in the separate condemnation case here at issue, where Roach's participation was already an accomplished fact and indeed, was indispensable as part of the quorum of four needed to conduct Commission business at that particular meeting.

Due process objections concerning these disqualifying conflicts of interest were raised by the Church early in the trial court proceeding (Second Amended Traverse and Motion to Dismiss filed April 15, 1981 [c-71, c-76] and were renewed throughout the trial phase (Reply in Support of Second Amended Traverse filed December 8, 1981 at pp. 4-10 [c-134, c-182] and in the state appellate proceeding (Brief for Appellant at pp. 37-39).

F. The Church Gets Relief From The Seventh Circuit in the Reverter Case.

On September 2, 1982, the United States Court of Appeals for the Seventh Circuit, in the Section 1983 case brought by the Church, ruled that the Commission's administrative reverter proceeding, held before itself, was void and unconstitutional because of the Commission's inherent bias and self-interest. *United Church of the Medical Center v. Medical Center Commission and Rush-Presbyterian St. Luke's Medical Center*, 689 F. 2d 693 (7th Cir., 1982).

Notwithstanding this development with respect to the "remainder" portion of the Church's property, effectively reducing the size of the Commission's available "target" by 70% (from ten lots down to three 25-foot lots), the Commission nevertheless, without further deliberation or determination as to the necessity of seizing the 75-foot piece of the Church's land, persisted in its efforts to condemn the small parking lot, standing alone:

> "By Mr. Witwer, Jr.:
>
> Q. Well, Mr. Bayster, has there been any discussion by the Commission as to whether it would still [after the 7th Circuit's injunction] be appropriate or necessary to go for the three lots here at issue?
>
> A. *There hasn't been any discussion at all.*

Q. Has there been any discussion by the Commission as to whether it would be feasible to put any kind of a structure on three lots of 25-foot width, which are now the parking lot?

A. I have answered that before. *There is no use for that property as yet.* They have the purpose, but not the use." (Vol. III at Tr. 7). (emphasis added).

G. The Church's Futile Efforts to Ascertain Its Injury Resulting From The Partial Taking, and Thus, Its Inability to Determine the Magnitude of Its "Just Compensation" Claim.

As noted above, from the inception of this case the Church experienced total frustration in its attempts to seek information as to the "purpose" or "plan" underlying the taking, not only to determine whether a public purpose is involved and the necessity for the action, but also, to assess the nature of the injury to the remainder likely to arise from any possible but yet unarticulated project. This, of course, is crucial to the proof and recovery of just compensation.

On May 11, 1982, the Church filed its Fourth Amended Traverse in the trial court, reiterating its constitutional protest over the lack of hard information in the pleadings or resolutions surrounding the existence of any purpose for the taking. (C-231). On June 7, 1982, the Church sought such a bill of particulars by way of a discovery deposition of Bayster. The results of this effort are summed up in the following deposition testimony by Bayster:

"Q. Beyond that [a general medical purpose], do you have any purpose in mind for the use of the property?

A. We don't have any—we don't work that way. We get the property first." (Dep. of June 7, 1982 at Tr. 16).

* * * *

"Q. To this day have you been made aware, either through verbal conversation or through written materials, of a plan or purpose for Lots 1 through 3?

A. No." (*Id.* at Tr. 18).

The traverse hearing testimony of Bayster shortly thereafter added nothing concerning the reasons for this condemnation, either at its inception—when it was part of a 10-lot acquisition program—or, following the action of the United States Circuit Court of Appeals, Seventh Circuit, standing alone as a 3-lot taking:

"Q. (By Mr. Witwer, Jr.): Mr. Bayster . . . is it your testimony then that you don't know what the use will be there at the corner of Ashland and Harrison after this taking is completed?

A. There will be a—there will be some medical conforming use.

Q. But you don't know what it is?

A. Not at this time.

Q. And you don't know who the user will be?

A. No, I don't." (Vol. I at Tr. 56-57).

Finally, at the compensation phase of the trial, the Church's counsel renewed his objection that the Commission's refusal to disclose "purpose" would deprive the Church of its ability or any fair opportunity to ascertain and prove-up its rightful compensation in the form of severance damages to the remainder. (Appendix E attached). These constitutional arguments were raised once again in the Appellate Court of Illinois (Brief of Appellant at pp. 33, 36; Reply Brief of Appellant at p. 8).

Six years after it commenced this condemnation, the Commission *still* refuses to determine or announce what use is to be given to the property it insists on taking away from the Church. At any time during this six-year period, the Commission could easily have defined and dis-

closed its purpose to the Church, but it chose not to do so, notwithstanding repeated pleas for clarification of its intentions. It even cancelled and never reinstated a June 18, 1982 meeting which had been called to determine the property's "ultimate use". (Appendix L attached).

REASONS FOR GRANTING THE WRIT

A.

THE CONDEMNATION PROCEEDINGS WERE FATALLY INFECTED WITH ADMINISTRATIVE BIAS AND CONFLICT OF INTEREST AND SHOULD THEREFORE HAVE BEEN INVALIDATED.

It is elementary that the administrative process must provide both fairness and the appearance of fairness where, as here, a governmental agency or commission is empowered to make determinations which directly affect fundamental rights of individuals. Due process demands a disinterested decisionmaker to assure fairness. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F. 2d 260 (D.C. Cir. 1962).

Here it must be recalled that the key resolution supporting the taking, dated July 17, 1981, was passed by a vote of four commissioners (bare quorum) three of whom had close "conflict of interest" ties to Rush, the undisclosed instigator of the action which would not be deterred in its quest to take over the Church's lands. The resolution's movant, Commission Roach, was at the time, a key attorney for Rush. A more pervasive conflict of interest by public officials is difficult to imagine. Here due process was blatantly scoffed at since the very persons who were empowered to make and did make the determination to

condemn the Church's property had a passionate, partisan and economic interest in the result.

This Honorable Court and other inferior courts, including the Illinois Supreme Court, have long condemned the undermining effect which conflict of interest and related bias bring to bear upon the administrative process. *Gibson v. Berryhill*, 411 U.S. 564, 36 L. Ed. 2d 488 (1973) (administrative deprivation of professional license by self-interested administrative tribunal); *Trans-World Airlines, Inc. v. Civil Aeronautics Board*, 254 F. 2d 90 (D.C. Cir. 1958) (former attorney for litigant later became CAB commissioner participating in case); and *American Cyanamid Company v. F.T.C.*, 363 F. 2d 757 (6th Cir. 1966) (former attorney for Senate Committee investigating drug companies later became chairman of F.T.C. and participated in decision adverse to such companies).

Nor can it be simplistically argued, as did the Commission below, that a condemnation resolution such as the instant one is a purely legislative act, *ergo*, procedural due process requirements are inapplicable or greatly diminished. Here, a state commission permeated with disqualifying conflicts of interest passed a resolution which *directly took property from another to give it to a recipient to which it owed an undisclosed economic allegiance.* The Church's only recourse was to defend in a state court system which traditionally grants virtually automatic deference to such administrative decisions.

The degree of "due process" required to be accorded in a given instance depends on the circumstances (*Goldberg, supra*, at 397 U.S. at 262-263). Whatever relaxation, if any, of procedural due process guaranties may be appropriate in regard to legislative action of broad and general applicability (*Cf, Pillsbury Co. v. F.T.C.*, 354 F. 2d 952 (5th Cir. 1966)) most certainly it is *not* appropriate where an administrative action is beamed narrowly and

directly at the property interests of a single owner. This distinction is recognized in the following distinguished commentary:

> "When an administrative agency engages in a legislative function, as, for example . . . regulations of *general* application affecting an unknown number of persons . . . [procedural due process, such as a hearing need not be afforded]. *On the other hand,* if a regulation, sometimes denominated an "order" . . . affects the property or interest of *specific named individuals* . . . the question [of] notice and hearing . . . becomes a matter of greater urgency. . . ." (emphasis added). "*The Constitution of the United States, an Analysis and Interpretation*", Congressional Research Service (1973 ed.) at p. 1432.

Clearly, the federal Constitution demands every bit as much procedural due process protection in the instant administrative proceeding (whether or not denominated as "legislative") as it would in the most intrusive judicial or quasi-judicial action directly threatening landowner's property interests. The decision below must be promptly reversed.

B.

THE APPELLATE COURT SHOULD HAVE INVALIDATED THE PARTIAL TAKING, SINCE THE RECORD ESTABLISHED THE COMMISSION ACTED ARBITRARILY AND SOLELY TO COERCE THE CHURCH INTO DEALING WITH RUSH ON RUSH'S TERMS. IN THE ABSENCE OF ANY LEGITIMATE, ANNOUNCED PURPOSE TIED TO ACTUAL FUTURE USE AND NECESSITY, THE COMMISSION LACKED AUTHORITY TO CONDEMN.

1. Reasons Why Showing Of "Purpose" And "Necessity" Are Required In Any Condemnation Case.

Except in the specialized areas of urban renewal and blight removal, not applicable here, a public agency has

no right to simply "condemn-now-and-decide-later" how a particular parcel of land is to be used. This principle applies with even greater force where a partial taking is involved since damages to the remainder must be ascertained in order to fulfill the constitutional requirement of safeguarding the Church's right to "just compensation." Here, the absence of a prior real purpose for the instant condemnation (except to pressure the Church into submitting to Rush) deprives the Church of its fundamental right under the Fifth and Fourteenth Amendments to have its property taken only for a "public purpose". The belated Commission resolution amendment adding the words "medical institutional expansion", subsequent to a change of the Commission's legal counsel months after the suit was commenced, did not cure the deficiency. As the testimony clearly shows, such a bare gesture of paraphrasing statutory purposes was meaningless since it did not reflect any real deliberation as to an actual objective or need for the taking.

The Illinois Eminent Domain Act provisions now found at Chapter 110, Ill. Rev. Stat., Section 7-101 *et seq.*, which are expressly incorporated by reference in the Medical Center Commission's enabling statute, require, *inter alia*, that there be a specification of a ". . . purpose for which the property is sought to be taken or damaged. . . ." Righeimer, the leading authority on Illinois condemnation, interprets the plain meaning of this provision as requiring description of ". . . a park, highway, school site, etc." Righeimer, "Eminent Domain in Illinois", (1972) at Sec. 3.04, p. 25 footnote 5. There is no suggestion in Righeimer's text that vague or general references to "public" or "medical" purposes will suffice.

While deference is ordinarily given to the action of a condemning authority, this and other courts have always claimed the ultimate prerogative of determining whether

the taking is for a "public use" and whether the taking is "necessary" for that use. *City of Cincinnati v. Vester*, 281 U.S. 439, 444 (1930).

If the landowner is to have a meaningful right to challenge the condemning authority's action on the constitutional ground that it has no proper public purpose, it necessarily follows that an alleged projected use must be fixed and declared by the condemning body before, not after, the court proceedings take place. Any infringement of this right has particularly grave implications in proceedings to secure a "partial taking" as is the situation in the matter at bar. If, as here, the condemnee is left uninformed and is given mere meaningless generalities reciting broad statutory purposes, his right to defend against improper taking is an empty one indeed. If he doesn't know what the real purpose is, he can hardly challenge it as a "non-public" exercise. But worse, still, when a partial taking is involved, this right assumes an even greater constitutional dimension impacting the condemnee's ability to assess and prove the extent of any injury to the remainder so as to insure recovery of just compensation for damage to that property.

The Commission's vagueness as to the purpose of the condemnation thus undermines the Church's constitutional and statutory rights to introduce evidence of injury to the remainder of its property (Lots 4 through 10) pursuant to a cross-petition. Remainder or "severance" damages have long been viewed as an integral part of a landowner's constitutional compensation rights. In *Bowman v. Ross*, 167 U.S. 548, 574 (1896), this Court held:

> "The just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation."

* * *

> "Consequently, when only part of a parcel of land is taken for a highway, the value of that part is not the sole measure of the compensation or damages to be paid to the owner; but the incidental injury or benefit to the part not taken is also to be considered."

To the same effect, see *United States v. Dickinson*, 331 U.S. 745, 750-751 (1947).

The scope of the right to severance damages has been well summarized by a leading commentator:

> "Every element of annoyance, inconvenience or disadvantage caused by the taking which would motivate a prospective purchaser both as to the advisability of purchasing the property, and as to the amount that he would pay therefor, are relevant factors in ascertaining the diminution in value of the remainder areas." 5 Nichols on Eminent Domain, Section 16-104 (1979).

It is pertinent to ask how any landowner can be in a position, through expert testimony or otherwise, to prove up the injury to its remaining property when the actual purpose of the primary taking is undisclosed? The necessity for this information is recognized in the Illinois Eminent Domain Act (Ch. 110, Sec. 7-124) which requires consideration of damage to the remainder "caused by . . . the proposed work . . ." The instant case is a curious departure from a long line of Illinois decisions which have always required such disclosure. For example, in *East Peoria Sanitary District v. TP&W Railroad*, 353 Ill. 296 (1933), the Illinois Supreme Court aptly observed:

> ". . . the practice has always been, in condemnation cases, to admit in evidence the plans of the work proposed to be done on the land taken, otherwise it could not be so well known how the projected improvement would effect the residue of the property." 353 Ill. at 304.

That Court added:

> ". . . what damages, if any, will the defendant sustain by reason of the construction of the proposed improvement in accordance with the plans of the petitioner? *To answer this question requires knowledge of those plans.*" 353 Ill. at 306. (Emphasis added).

Here, the Church sought at trial to prove up,[6] as best it could, potential damages to its remainder by presenting a number of possible injury "scenarios" which would accompany a range of possible hypothetical uses of the parking lot by the Commission or a medical institution. Though these scenarios were of necessity speculative, the Church and its expert witness maintained this quagmire was a direct consequence of the Commission's failure to divulge its plans, assuming *arguendo*, it had any:

> "Without knowing exactly what was going to be built there and what . . . [there] . . . was going to be, I have no real way of telling exactly what the damages would be to the remaining property." (Testimony of William Metz, M.A.I., Vol. VII at Tr. 122).

Given the Illinois Appellate Court's refusal to require the Commission to divulge its plans, the remand designed to resolve the question of damage to the remainder results in a paradoxical situation: any trier of fact will be hard-pressed to ascertain, and the Church will be rendered unable to prove, the source or amount of severance damages without resorting to rank speculation.

In the instant case, the Illinois Appellate Court seriously erred in affirming, on most issues, the trial court's decision and the Supreme Court of Illinois has likewise erred

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[6] Since the trial court denied the Church's cross-petition, these scenarios were presented in an offer of proof. (Appendix at A7-9).

in failing to grant review. The Church maintains that since the context of this case is one of a "partial taking", it has an absolute right to disclosure of a reasonably specific purpose as an essential element of its constitutional right to just compensation under the Fifth and Fourteenth Amendments.

CONCLUSION

For all of the reasons stated above, Petitioners, United Church of the Medical Center, and the Resident Bishop of the Chicago Area of the United Methodist Church, respectfully pray that this Court grant their Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

Opinion of the Appellate Court of Illinois
First District, Fifth Division
No. 84-2435 — Filed March 31, 1986
142 Ill. App. 3d 498
491 N.E.2d 1327 (1st Dist. 1986)

STATE OF ILLINOIS MEDICAL CENTER COMMISSION, a body politic and corporate of the State of Illinois,

Plaintiff-Appellee,

v.

UNITED CHURCH OF THE MEDICAL CENTER, an Illinois religious corporation, et al.,

Defendants-Appellants.

Appeal from the Circuit Court of Cook County.
Honorable Arthur L. Dunne, Judge Presiding.

JUSTICE MURRAY delivered the opinion of the court:

After a bench trial, the circuit court of Cook County entered judgment for plaintiff State of Illinois Medical Center Commission (the Commission), approving the partial taking of real property from defendant United Church of the Medical Center (United Church) and awarding United Church $45,000 as just compensation for the property. On appeal, United Church argues: (1) the Commission's condemnation of the property was invalid because it failed to identify the purpose and proposed use or necessity for the taking of the property; (2) the condemnation proceedings were fatally infected with administrative bias and conflict of interest; (3) the trial court erred in its deter-

mination that United Church's fee-parking activity on the condemned property rose to the level of a secular use, thereby destroying its religious exemption status; and (4) the court erred in denying United Church's cross-petition for severance damages to the remainder property. United Church does not contest the valuation of compensation for the taken property. For the reasons set forth below, we affirm in part, reverse in part, and remand the cause for proceedings consistent with this opinion.

This case involves an eminent domain action instituted by the plaintiff Commission pursuant to the provisions of section 7-101 of the Illinois Code of Civil Procedure. (Ill. Rev. Stat. 1985, ch. 110, par. 7-101 *et seq.*) On May 28, 1980, the Commission filed a petition to condemn 3 of 10 lots, 150′ x 76′, utilized by United Church as a parking lot for its employees and parishioners' use and as leased parking to some of the area's medical personnel. The condemned property (the parking facility—Lots 1 through 3) is located at the southwest corner of Harrison Street and Ashland Avenue in Chicago, Illinois, and the remainder property (the sanctuary—Lots 4 through 10) directly to the south thereof. Various constituent organizations and officials of the United Methodist Church were included as party defendants and have joined with United Church to assert a common position in its behalf as the real party in interest and occupant of both the condemned property and the remainder.

The record discloses that the Medical Center District Act (the Act), created the plaintiff Commission and conferred on it jurisdiction over a medical center district located on the west side of Chicago. (Ill. Rev. Stat. 1979, ch. 111½, par. 5001 *et seq.*) The Act expressly authorizes the Commission to acquire by eminent domain property within the district's boundaries necessary for its purposes of establishing a medical center district. Section 5004 of

the Act exempts property owned by religious organizations which is used for religious purposes, but also empowers the Commission to acquire property which is "used for both religious and secular purposes." Ill. Rev. Stat. 1979, ch. 111½, par. 5004.

The record further reveals that the Commission's condemnation of the property was authorized by three resolutions enacted by the Commission on June 16, 1978, September 15, 1978, and December 14, 1979. The resolutions stated that the acquisition was for the "purpose" provided in the Act. During the pendency of this case, the Commission passed a fourth resolution on July 17, 1981, more definitively defining its purpose for taking the property as "medical institutional expansion."

In response to the petition to condemn, United Church filed an original and four amended traverses, alleging that the taking was invalid because:

> (1) the Commission could not and would not divulge its actual purpose in taking the property or any proposed use for the property;
>
> (2) the condemnation proceeding was fatally infected by a conflict of interest in that three of the four Medical Center commissioners who voted for the definitive resolution were impermissibly related to Rush-Presbyterian St. Luke's Hospital, the alleged "behind-the-scenes" moving force which induced the Commission to act; and
>
> (3) the property was an integral part of United Church's operation and it therefore was exempt from condemnation under the Medical Center District Act which expressly prohibits the taking of property owned by religious organizations, except parcels used for both religious and secular purposes.

On October 29, 1982, the trial court denied the traverse based on its determination that United Church's rental parking activity on the subject property was secular in nature and, accordingly, destroyed its religious exemption from condemnation of its property by the Commission. The court did not address the issues of the Commission's alleged failure or refusal to disclose the proposed use of the property or the alleged conflict of interest question.

On February 18, 1983, the trial court certified an interlocutory appeal by United Church pursuant to Supreme Court Rule 308. (Ill. Rev. Stat. 1985, ch. 110A, par. 308.) In its application for leave to appeal, United Church raised the issues of whether the Commission adequately identified the purpose of the taking, the ultimate use to be given the property and the necessity thereof, and whether United Church's parking activity was sufficient to deprive it of the statutory exemption against condemnation of religiously owned property. The application was denied by this court on May 8, 1983.

Trial of the matter was resumed by the court below in August 1984. United Church subsequently filed a cross-petition to recover severance damages to the remainder of its property, claiming curtailment of parking space, loss of ingress, light and frontage exposure. In its consideration of the cross-petition, the court stated that United Church's recovery of damages to the remainder was dependent upon whether the unities of use, contiguity and title existed between the property taken and the remainder on the date of the filing of the petition to condemn. The court found that even though United Church held title when it filed its cross-petition, it lacked title at the time of the filing of the petition to condemn on May 28, 1980. At that time, title to the remainder property was held by a predecessor Methodist congregation

and later a Presbyterian church, both having been part of a combined Methodist/Presbyterian program conducted by United Church on the sanctuary property. Accordingly, the court entered judgment in favor of the Commission, approving the condemnation of Lots 1 through 3 and awarding United Church $45,000 as just compensation for the taking of the property.

We first address United Church's contention that the failure of the Commission to specify or identify the purpose or use to which it intends to put the condemned property contravenes the Eminent Domain Act. (Ill. Rev. Stat. 1985, ch. 110, par. 7-102.) United Church argues that in the absence of an announced purpose tied to any future use and necessity, the Commission lacked authority to condemn its property. It relies on *People v. YWCA* (1981), 86 Ill. 2d 219, 427 N.E.2d 70, which addressed the existence or absence of a public purpose, future use and necessity as requisites for a taking of property. There, in finding that the condemning body failed to show a necessity for the taking for a courts' complex, our supreme court held that although the question of necessity is essentially within the power of the condemning body, a court may and should upon a traverse on the property inquire into the necessity for the use to determine whether the condemning body acted arbitrarily.

In the present case, the Commission asserts it did not act arbitrarily and that its condemnation of the subject property for medical purposes is a legally adequate specification for the taking even though the ultimate medical use or uses of the property have not as yet been determined. In support of this contention, it cites *City of Chicago v. Barnes* (1964), 30 Ill. 2d 255, 195 N.E.2d 629, which held that condemnation powers are properly exercised if the express use is for a public purpose even

though the ultimate use or uses has not as yet been determined at the time of condemnation.

We believe no conflict exists between the Commission's position and that of United Church. Where the condemning body makes a determination of necessity for a public body to take property for a proper public purpose, the ordinance or resolution establishing the necessity creates a *prima facie* case of need for the taking in the traverse action. (*City of Chicago v. Barnes* (1964), 30 Ill. 2d 255, 195 N.E.2d 629.) If the condemning body fails to specifically make such a determination, it is not fatal to the condemnation procedure provided the evidence presented by the condemning body in the traverse hearing discloses a necessity. (*People v. YWCA* (1981), 86 Ill. 2d 219, 427 N.E.2d 70.) As our supreme court stated in *YWCA*,

> "the absence of a legislative finding of necessity would not be fatal if it were otherwise unequivocally established by the record that the property was necessary for Sangamon County circuit court use. The case turns on whether, lacking such legislative determination, the record contains such evidence to support the trial court's implicit finding that necessity existed." 86 Ill. 2d 219, 240.

Here, the General Assembly, in enacting the Medical Center District Act creating the Commission, specifically authorized the Commission to exercise eminent domain powers to carry out its purpose with respect to property within the district. (Ill. Rev. Stat. 1979, ch. 111½, par. 5004.) We agree, as the Commission argues, that a medical purpose is a public purpose sufficient to sustain an eminent domain action even though the ultimate use or uses of the condemned property has not as yet been determined. (*City of Chicago v. Barnes* (1964), 30 Ill. 2d 255, 195

N.E.2d 629.) The Commission's 1981 resolution stating the purpose of the acquisition to be for medical institutional expansion was sufficient to establish a *prima facie* case of need. The burden was then on United Church to demonstrate that the Commission acted arbitrarily in the matter.

We thus come to United Church's next argument that the Commission did act arbitrarily. United Church alleges that three members of the Commission who participated in the enactment of the resolutions for the condemnation of the subject property had a conflict of interest precluding their participation in the proceedings before the Commission which resulted in the authorization of the condemnation action. United Church charges that Commissioners Livingston, Hoffman and Roach have important links to Rush-Presbyterian St. Luke's Hospital and that their participation in the resolution proceedings was intended to benefit Rush which was having an expansion problem.

Absent evidence of fraud, courts ordinarily do not inquire into the interest, bias or motives of a municipal body acting in a legislative capacity. (*Chicago Park District v. Kenroy* (1980), 78 Ill. 2d 555, 402 N.E.2d 181.) Here, United Church neither alleges fraud, nor has any evidence been presented disclosing fraud by Livingston, Hoffman or Roach. Moreover, with regard to Livingston's, Hoffman's and Roach's conflict of interest because of their alleged links with Rush, we note that the Medical Center District Act provides for public hearings in the event the Commission decides to convey real property, as well as judicial review of any decision of the Commission in such a case. (Ill. Rev. Stat. 1979, ch. 111½, pars. 5009, 5010, 5015.) Accordingly, any conflict of interest by Livingston, Hoffman or Roach can be raised by defendant or other interested parties in the required public hearing if the

Commission attempts to lease or convey the subject real estate to Rush.

We also reject United Church's contention that the trial court erred in finding the condemned property was not used solely for religious purposes. It argues that the income derived from the use of the property for rental parking was "miniscule" and, therefore, did not rise to the level of secular use.

The Act creating the Commission expressly permits it to condemn a religious institution's property if it is used for "both religious and secular purposes." (Ill. Rev. Stat. 1979, ch. 111½, par. 5004.) Here, the record discloses that United Church continually leased space in the parking lot to personnel working in the Medical Center, Monday through Friday. Even though United Church's use of the property primarily might have been for religious purposes and as a parking facility for the use of its employees and parishioners, the fact that the property also was used for secular purposes part of the time is sufficient to deprive it of its religious exemption status. In addition, we note that the fact that the income received from the rental parking was devoted to religious purposes is not sufficient to make United Church's use of the subject property a religious use. *Scripture Press Foundation v. Annunzio* (1953), 414 Ill. 339, 111 N.E.2d 519.

Accordingly, because of our determination that the Act and resolutions disclose a public purpose and need for the eminent domain proceedings and no evidence has been presented revealing arbitrary enactment of the resolutions, as well as the fact that United Church's rental parking activity was of a secular nature, we affirm the trial court's judgment condemning the subject property.

Finally, United Church argues that the trial court's denial of its cross-petition for severance damages to its remainder property was error and infringed on its right to just compensation guaranteed by the fifth and fourteenth amendments of the United States Constitution (U.S. Const., amends. V, XIV) and article I, section 15 of the Illinois Constitution (Ill. Const. 1970, art. I, sec. 15). We agree. The trial court's sole reason for denying the cross-petition was its belief that all three unities of use, contiguity and title must have existed between the condemned property and the remainder at the time of the initial filing of the petition to condemn. Finding that United Church lacked unity of title at the time of filing the condemnation petition, the court denied its cross-petition, even though it fulfilled the two requisite unities of use and contiguity—the parking lot was used by its parishioners and employees and adjoined the sanctuary property. United Church's only apparent remedy therefore for injury to its remainder as a result of the use of the taken property by the Commission, based on its subsequent acquisition of title to the remainder, would be an action at law when the damage, if any, occurs. *Department of Transportation v. McGovern* (1982), 103 Ill. App. 3d 461, 464, 431 N.E.2d 437.

Despite the foregoing, no Illinois case law exists as to *when* unity of title is determined for the purpose of valuation of the condemnee's loss or injury by reason of the taking of his property in eminent domain. In *Department of Conservation v. Franzen* (1976), 43 Ill. App. 3d 374, 356 N.E.2d 1245, this court was confronted with the issue of whether beneficiaries under separate land trusts to certain parcels, were precluded from recovery of severance damages to their remainders because of an alleged lack of unity of title. We held that even though the benefici-

aries did not hold legal title, they each possessed a *beneficial interest* in the property condemned and, therefore, unity of ownership *or interest* was satisfied and the beneficiaries had standing to seek severance damages to their property. In making this determination, we considered the basic question whether in light of relevant statutory and constitutional provisions the ends of justice would be served by permitting the damages to property not taken to be considered in the same proceedings in which just compensation for taken property was to be determined. We concluded that it appeared to us that "the paramount constitutional requirement of just compensation must be allowed to prevail over the niceties of legal title advanced by the State." (See also *Erly Realty Development, Inc. v. State* (1974), 43 App. Div. 2d 301, 351 N.Y.S.2d 457; *cf. M.T.M. Realty Corp. v. State* (Ct. Cl. 1965), 47 Misc. 2d 44, 261 N.Y.S.2d 815.)" 43 Ill. App. 3d 374, 384.

We also observe that none of the constitutional or Illinois statutes require or refer to the legal title holder or at what time in an eminent domain proceeding the unity of title or interest in property taken or damaged is to be determined. The fifth amendment of the United States Constitution provides private property shall not be taken for public use, without just compensation. (U.S. Const., amend. V.) The Illinois Constitution states "[p]rivate property shall not be taken or damaged for public use without just compensation." (Ill. Const. 1970, art. I, sec. 15.) Illinois' Eminent Domain Act provides that "[p]rivate property shall not be taken or damaged for public use without just compensation" and "any person * * * [who] is the owner *or has an interest in property*, * * * which will be taken or damaged" may become a party to the condemnation proceedings by filing a cross-petition, the rights of such party "thereupon to be fully considered and

determined." (Emphasis added.) Ill. Rev. Stat. 1985, ch. 110, pars. 7-101, 7-124.

We also note that it is well settled condemnation law that all persons having any right, *title or interest* in the premises should be made parties to a condemnation action. *Chicago, North Western R.R. Co. v. Miller* (1911), 251 Ill. 58, 95 N.E. 1027.

Here, it is clear that United Church has an interest in the remainder property. For at least 12 years it has had the authority to control, manage and use the property and, in fact, possessed legal title to the property at the time the trial court entered its condemnation judgment. We hold therefore, in light of the above constitutional, statutory and case law relating to eminent domain, that the trial court erroneously concluded that United Church lacked unity of legal title which precluded it from filing its cross-petition for severance damages to the remainder.

For the foregoing reasons, the trial court's judgment condemning the subject property is affirmed, the court's denial of United Church's cross-petition is reversed, and the cause is remanded for a determination of the damage, if any, due United Church to the remainder of its property occasioned by the taking.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

SULLIVAN, P.J., and PINCHAM, J., concur.

APPENDIX B

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of September, 1986.

Present: William G. Clark, Chief Justice
Justice Daniel P. Ward — Justice Joseph H. Goldenhersh
Justice Howard C. Ryan — Justice Thomas J. Moran
Justice Seymour Simon — Justice Ben Miller

On the second day of October, 1986, the Supreme Court entered the following judgment:

No. 63474

State of Illinois Medical Center Commission, a body politic and corporate of the State of Illinois,

Respondent

v.

United Church of the Medical Center, an Illinois religious corporation, et al.,

Petitioners

Petition for Leave to Appeal from the Appellate Court First District 1-84-2435 80L12323

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this twenty-fourth day of October, 1986.

/s/ Juleann Hornyak
Clerk
Supreme Court of the
State of Illinois

APPENDIX C

(Letterhead Of)

State of Illinois
SUPREME COURT CLERK
Supreme Court Building
Springfield 62706

December 1, 1986

Witwer, Moran, Burlage & Witwer
Mr. Samuel W. Witwer, Jr.
125 S. Wacker Dr., S#2700
Chicago, IL 60606

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 63474—State of Illinois Medical Center Commission, etc., respondent, v. United Church of the Medical Center, etc., et al., petitioners.

Motion by petitioners for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion *denied.* Simon, J., took no part.

cc: Michael D. Leroy

JH/dec

APPENDIX D

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

STATE OF ILLINOIS MEDICAL CENTER COMMISSION, a body politic and corporate of the State of Illinois,

Petitioner,

No. 80 L 12323 v.

DONATA PASQUALE, et al.,

Defendants.

ORDER
(Entered October 29, 1982)

This cause coming before the Court for hearing on Defendants' Traverse and Motion to Dismiss, as amended, and the Court having heard evidence, both oral and documentary, and having heard the arguments of counsel, and being fully advised in the premises:

IT HEREBY ORDERED, that the Defendants' Traverse and Motion to Dismiss, as amended, be and is hereby denied;

It is further ordered that this cause be set for status report on December 2, 1982 at 10:00 a.m.

Enter: /s/ Arthur L. Dunne
Judge

APPENDIX E

EXCERPT OF TRANSCRIPT OF PROCEEDINGS (PAGES 72 *ET SEQ.*) OF AUGUST 21, 1984

[72] "MR. WITWER: May the record show had I been given the opportunity to recall Reverend Constantino on the issue of damages to the remainder; that is, lots 4 through 10, he would have testified that the church has repeatedly and over the period of the last nearly four years sought but failed to obtain from the Medical Center Commission any designation of proposed use of the property taken.

However, if the property taken ultimately is used for any purpose other than that of a flat or multi-story parking garage, that it would cut the church's available parking capacity in half and would have a very dilatorious effect on the ability of the church to continue in operation and would curtail growth and in fact would cause impairment of membership because of the relative inaccessibility [73] of on-street parking and the alternative to the parishioner which would be to pay money for commercially offered parking in the area.

Further, the testimony would have established that if the proposed use which is as yet unknown by the Medical Center Commission proved to be—to include the west alleyway to the reat (sic) of the property taken so as to block that alleyway, the church would be left with but a single point of egress and ingress; namely, for a parishioner to travel southbound on Ashland Avenue and make a turn into the sole remaining parking lot to the south of the church building.

The other means of access which has long been used involves an ability of a parishioner to come in through the alleyway right behind lots 1, 2, and 3 whether they are traveling east or west on Harrison Street.

Finally, the Reverend would testify that depending on the use given to the corner lot ultimately by the Commission or its designee, the church's excellent vista and visibility to the entire district on one of its prime corners, Ashland and Harrison, which at the present time is open [74] and perhaps even arresting to an oncoming motorist, there would be interposed between the church and the public some form of structure that would materially curtail light, air, view both outward from the church and inward from the adjoining neighborhood.

I would like further to indicate that the offer of proof would be that because the Commission has not favored the church with any kind of bill of particulars for four years, that the church would not have been able to calculate with any reasonable certainty the pecuniary impact on the market value of its remainder due to these speculative potential events.

I would also like to make an offer of proof for my appraiser, Mr. Metz, who was prepared to testify and would have testified to the variety of conforming uses in his understanding which would have been permissible on this lot that is being taken from us by the Medical Center Commission which would include among other things—

MR. LEROY: Your Honor, if I may—

MR. WITWER: I am about done, your Honor.

MR. LEROY: If I may, your Honor, I believe [75] Mr. Metz will testify. Is that correct?

MR. WITWER: Yes, but he won't be able to testify about the remainder.

MR. LEROY: But he would be able to—

THE COURT: He can testify in the form of an offer of proof.

MR. LEROY: For the record, I would object to the testimony indicated by Mr. Witwer as far as Reverend Constantino's testimony insofar as I believe that that testimony would have been speculative and that it could have contained items which—items of damage which were non-compensable.

THE COURT: I will let it stay on the record as an offer of proof.

MR. WITWER: That's precisely our point . . ."

APPENDIX F

DEFENDANTS' GROUP EXHIBIT 2

AGENDA

MEDICAL CENTER COMMISSION

RUSH-PRESBYTERIAN-ST. LUKE'S
PROFESSIONAL BUILDING
1725 W. Harrison Street
Chicago, Illinois 60612

SEPTEMBER 15, 1978

12:30 P.M.

		Page
1.	Roll Call	
2.	Minutes—Meeting June 16, 1978	
3.	Report of the Executive Director	1-3
4.	Financial Statement	4-27
5.	Old Business	

A. Matters relating to Union Health Services Inc. Site—Oakley, Congress, Leavitt & Harrison Streets

B. Request of Commonwealth Edison for site to build transmission and distribution sub-station.

C. Condemnation of vacant land at South-west corner of Harrison Street and Ashland Boulevard (Request of RPSL)

D. Amendments to Medical Center District Act—Chapter 91, Sections 125 to 136, Illinois Revised Statutes:

Use and allocation of Commission funds:

a. Chapter 91 Section 134 Illinois Revised Statutes of 1973 (See Director's Report)

b. That Section 134 of Chapter 91—Illinois Revised Statutes be amended to allow for use of monies for land sales to be used in the District and that all Monies received be used for "operations, maintenance and improvements of property without restriction.

E. Illinois Administrative Procedure Act Certification of Rules

F. Request of Board of Commissioners of Cook County, Illinois to acquire land to construct Institute of Forensic Medicine

G. Authorize conveyance to American Society of Clinical Pathology of additional land—West half of block bounded by West Congress Place, South Hoyne Avenue, West Harrison Street and South Leavitt Street

APPENDIX G

EXHIBIT X TO DEFENDANTS' BRIEF IN SUPPORT OF SECOND AMENDED TRAVERSE FILED APRIL 15, 1981

(Letterhead Of)

FRIEDMAN & KOVEN
208 South LaSalle Street
Chicago, Illinois 60604

September 19, 1978

William F. Scannell
General Counsel
Medical Center Commission
736 South Ashland Avenue
Chicago, IL 60607

Re: United Church of the Medical Center

Dear Bill:

I have requested a "necessary parties" search out of Unit 20 at Chicago Title with respect to the property at the southwest corner of Ashland and Harrison (lots one through four which should include all of the vacant). The search will be mailed directly to you by Unit 20.

Very truly yours,
/s/ George W. Davis

GWD/mkc

bbc: Robert J. Zimmerman
Oscar O. D'Angelo

APPENDIX H

DEFENDANTS' EXHIBIT 8

(Letterhead Of)
FRIEDMAN & KOVEN
208 South LaSalle Street
Chicago, Illinois 60604

November 5, 1979

BY MESSENGER

Mr. Raymond J. Bayster
Executive Director
Medical Center Commission
736 South Ashland Avenue
Chicago, IL 60607

Re: United Medical Center
Church Parking Lot

Dear Ray:

Now that the Commission's acquisition of the vacant land north of the United Medical Center Church building currently utilized for parking is "back on track", I am enclosing a copy of a "necessary parties" search (no. 66-17-595). A copy was previously supplied to Bill Scannell.

In instituting a condemnation action, please do not forget that the portions of the vacated alley to the west of the parcels in question are to be included in the action.

If you have any questions, please do not hesitate to call.

Very truly yours,
/s/ George W. Davis

GWD/mkc
enclosure

cc: William H. Roach, Jr., Esq.
Oscar O. D'Angelo, Esq.

APPENDIX I

DEFENDANTS' EXHIBIT 9

(Letterhead Of)

FRIEDMAN & KOVEN
208 South LaSalle Street
Chicago, Illinois 60604

March 17, 1980

Raymond J. Bayster
Executive Director
Medical Center Commission
736 South Ashland Avenue
Chicago, IL 60607

Re: United Medical Center Church

Dear Ray:

As we previously discussed, I have checked into the history behind the dissolution of the I.M.C. Wesley Foundation, a not-for-profit corporation of Illinois. Enclosed, herewith, is a copy of the Final Articles Of Dissolution filed on April 1, 1970 with the Office of the Secretary of State. Therefore, it is clear that the voluntary dissolution may not now be revoked (see Section 47 of the Illinois Not-For-Profit Act enclosed, herewith) and that the dissolution was not involuntary and as a result of the failure to pay any corporate taxes.

There may be a formal plan of liquidation in existence, but such a plan need not be filed with the Secretary of State's Office. You may be able to obtain a copy of the plan if one exists once the Commission institutes an action to assert its right of re-entry.

Very truly yours,
/s/ George W. Davis

GWD/mkc

enclosures

cc: Edward Scott
bcc: William H. Roach, Jr., Esq.
Donald Oder

APPENDIX J

EXHIBIT 2 OF APPENDIX FILED WITH SEVENTH CIRCUIT COURT OF APPEALS BY RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER IN CAUSE NOS. 81-2887 AND 82-1211, CONSOLIDATED

GARDNER, CARTON & DOUGLAS
ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60803
AREA CODE 312 726-2452
CABLE-GARCAR
TELEX 28-2628

January 14, 1982

Mr. Park Livingston
President
Medical Center Commission
736 South Ashland Avenue
Chicago, Illinois 60607

Dear Park:

Questions have arisen in Federal Court litigation involving the Medical Center Commission, the Wesley Foundation and the United Church of the Medical Center as to whether I would be able to act fairly and impartially as a Commissioner in deciding matters concerning the Wesley Foundation and the United Church of the Medical Center. It is suggested that, as a former officer of Rush-Presbyterian-St. Luke's Medical Center ("RPSLMC") and as a partner of the law firm that serves as RPSLMC's general outside counsel, I would be unable to do so.

While I believe I can act with complete fairness and impartiality in these matters and that no evidence exists to prove otherwise, I would prefer to recuse myself from proceedings involving Wesley Foundation and the United Church of the Medical Center. The additional controversy and delay that

would likely ensue should I participate in these matters is unnecessary, and, therefore, I request that you permit me to withdraw.

Sincerely,

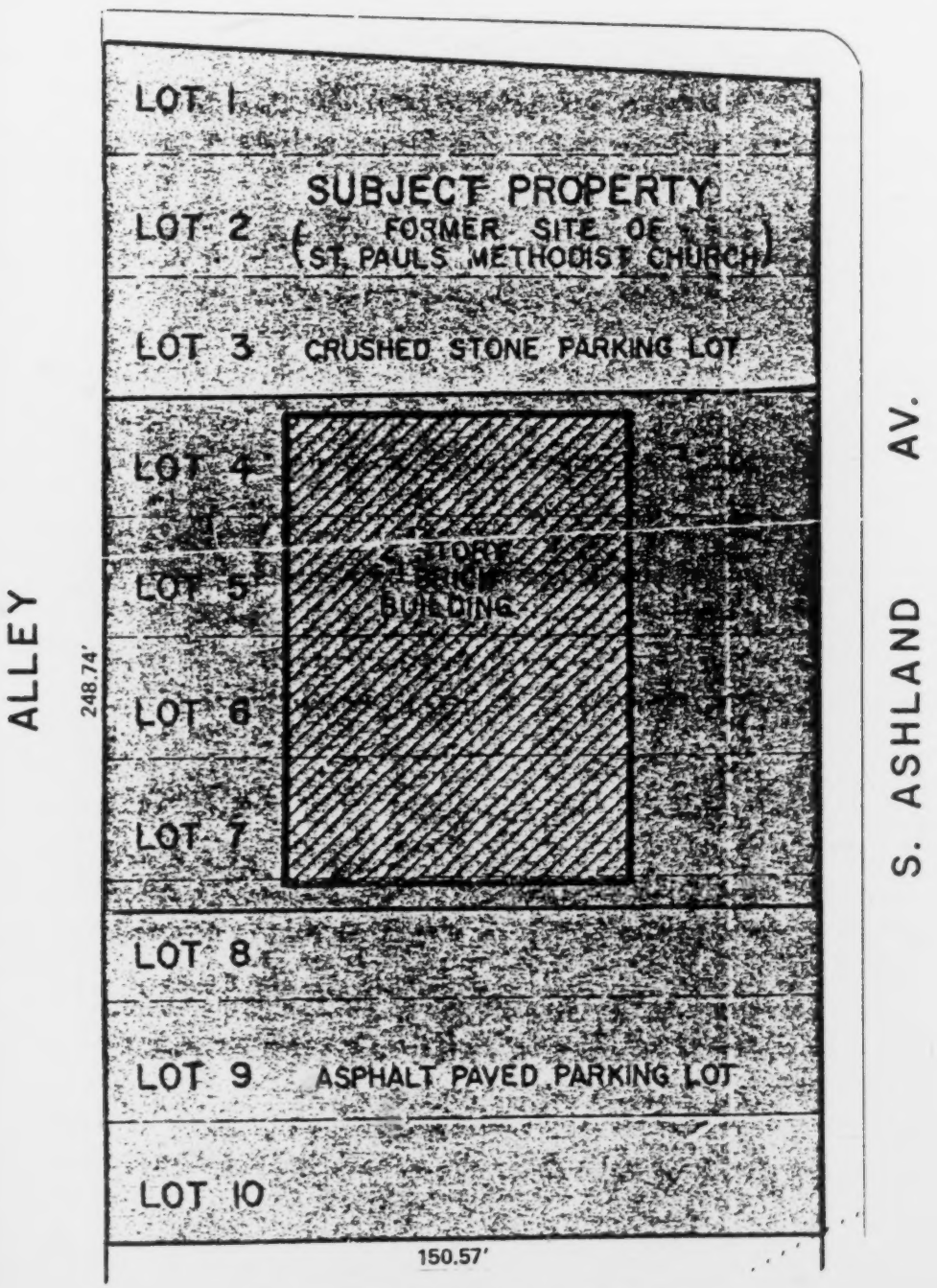
/s/ WILLIAM H. ROACH, JR.

WHR/dr

cc: Joseph H. Brown, M.D.
Mr. Charles J. Burg
Samuel J. Hoffman, M.D.
Kenneth D. Schmidt, M.D.
Edward Scott, Esq.

APPENDIX K

DEFENDANTS' EXHIBIT 5



Site Plan Of Entire Property

APPENDIX L

DEFENDANTS' EXHIBIT 7

AGENDA

STATE OF ILLINOIS
MEDICAL CENTER COMMISSION

June 18, 1982
1:30 P.M.

Rush-Presbyterian-St. Luke's Medical Center
Board Room
1725 W. Harrison Street
Chicago, Illinois 60612

		Page Number
1.	Roll Call	
2.	Minutes—Meeting April 2, 1982	1
3.	Report of Executive Director	2-6
4.	Financial Statement—March, April and May	(a)-(dd)
5.	Old Business	
	A. Report of Standing Committees	
	1. Legal Affairs—Dr. Kenneth D. Schmidt Chairperson.	
	a. Reverter Hearings	
	1. Westminster Foundation—No. 76-1	
	2. Wesley Foundation (United Church of Medical Center) No. 80-1	

3. Dual land request of Amusement and Janitor's Local #25 and Rush-Presbyterian St. Luke's Medical Center for property commonly known as Easter Seal site and Bishop Anderson site and Commission—owned property south of Easter Seal to Polk Street

4. University of Health Sciences/The Chicago Medical School—property at Ogden, Polk, Hoyne, Harrison and Damen

* * * * *

c. Eminent Domain

1. Acquisition of University Inn property—Circuit Court of Cook County No. 80 L 17625

2. Acquisition of St. Paul's Methodist property, 600-606 S. Ashland, and determination of ultimate use, Circuit Court of Cook County No. 80 L 12323

Emphasis arrow added by Petitioner.